

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Emery McKee;)
)
Plaintiff,) **C/A No. 3:06-0216-CMC-JRM**
)
v.) **OPINION AND ORDER**
)
Movie Gallery; Deputy D. Tucker; and)
Deputy P. Reed;)
)
Defendants.)
)

Plaintiff filed this action claiming his constitutional rights were violated when he was arrested by Defendants Tucker and Reed, who are police officers, after an armed robbery occurring at Defendant Movie Gallery. According to Plaintiff, employees of Defendant Movie Gallery allegedly identified Plaintiff as the robber after being presented with a photo of Plaintiff by Defendant Tucker. Plaintiff states that the prosecution for armed robbery “has been terminated in the Plaintiff’s favor.” Plaintiff seeks monetary damages from all Defendants under 42 U.S.C. §§ 1983, 1985, and 1986 and asserts claims for false arrest and malicious prosecution. In accordance with this court's order of reference, 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(d), D.S.C., this matter, filed *in forma pauperis*, was referred to United States Magistrate Judge Joseph R. McCrorey for initial review.

This court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee’s

note).

Based on his review of the record, the Magistrate Judge has recommended that Defendant Movie Gallery be dismissed as a party defendant in this action. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Plaintiff has filed no objections and the time for doing so has expired.

After reviewing the Complaint, the record, and the Report and Recommendation of the Magistrate Judge, the court agrees that Defendant Movie Gallery should be dismissed. However, the last line in the first paragraph on page 7 of the Report and Recommendation which reads, "Under 28 U.S.C. § 1915A, federal courts are specifically directed to screen and dismiss prisoner complaints which fail to state a claim" is not adopted because Plaintiff is not a prisoner. Accordingly, except for the last line in the first paragraph on page 7 referenced above, the Report and Recommendation of the Magistrate Judge is adopted and incorporated by reference.

IT IS HEREBY ORDERED that the Movie Gallery is dismissed as a party defendant.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
February 22, 2006

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